

A. G. Contract No. KR02-0482TRN  
ADOT ECS File: JPA 02-48  
Project No.: STP-PPM-0(49)P  
TRACS No.: 0000PM PPM SS333 01C  
Section: Wetmore Road/Ruthrauff Road  
(La Cholla Boulevard to Fairview Avenue)  
COUNTY No. 01-04-A-132241-0403

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE COUNTY OF PIMA

THIS AGREEMENT is entered into 19th May, 2003, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the COUNTY OF PIMA acting by and through its BOARD OF SUPERVISORS, (the "County")

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The County is empowered by Arizona Revised Statutes Section 11-201 and 11-952 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the County.

3. The County has submitted to the Federal Highway Administration (FHWA) for approval of federal funds for the construction of Wetmore Road/Ruthrauff Road, from La Cholla Boulevard to Fairview Avenue, herein referred to as the "Project". Such federal funds, estimated at \$11,610,000.00, are identified in the Pima Association of Governments (PAG) 2002-2006 Transportation Improvement Program (TIP) as (ID#800.00), for advancement of construction in federal fiscal year (FFY) 2003 and funded for reimbursement in FFY 2004, subject to the availability of federal funds. The federal fiscal year is defined as October 1 to September 30. Federal fiscal year 2004 means on or after October 1, 2003.

4. The County wishes to advance the Project's construction using County funds and meets the FHWA requirements for advancement. The County and the PAG selected the Project within the boundary of the County. The County takes full responsibility of all Project costs until the time of federal reimbursement in FFY 2004. If federal funds are not available, the County is responsible for the total cost of the Project.

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NO. 26004  
Filed with the Secretary of State  
Date Filed: 05/19/03

Janice K. Brewer  
Secretary of State

By: Dan V. Haerewald

5 The purpose of this agreement is to authorize the State to acquire federal funds that will be used to reimburse the County for up to 94.3% of the total Project construction costs and to authorize the State to convey federal funds to the County, once said funds have been acquired

6 The only interest of the State in this Project is in the acquisition of federal funds and facilitating the reimbursement of said federal funds in FFY 2004, in accordance with 23 U.S.C. 115. It is understood and agreed to by the parties herein, that authorization of this Project does not constitute a commitment, guarantee or obligation on the part of the State

7 The County, in order to obtain federal funds for the construction of the Project, is willing to expend County funds, complete the Project prior to the program year fixed and determined by the County and FHWA and identified in the Pima Association of Governments (PAG) 2002-2006 Transportation Improvement Program (TIP)

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

## **II. SCOPE OF WORK**

1 The work embraced by this agreement and the estimated Project costs are as follows: The construction of Wetmore Road/Ruthrauff Road, from La Cholla Boulevard to Fairview Avenue

|  |                               |
|--|-------------------------------|
| Estimated Construction Costs                                 | \$15,860,856.00               |
| Federal Aid Funds @ 94.3% (Reimbursement in FFY 2004)        | \$11,610,000.00               |
| Estimated County Funds @ 5.7%                                | \$ 701,771.00                 |
| Estimated Additional County Funds @ 100%                     | \$ 3,549,085.00               |
| <b><i>Total Estimated County Funds (upon completion)</i></b> | <b><i>\$ 4,250,856.00</i></b> |

2 Upon execution of this agreement the County will request the State submit the Project to the FHWA for authorization, which is scheduled for reimbursement in the FFY 2004 in an amount estimated at \$11,610,000.00

3 The County agrees to fund the total cost of the Project work provided for in this agreement, in an amount estimated at \$15,860,856.00, which includes the amount of federal funds to be received in FFY 2004

4 The cost of the construction work covered by this agreement is to be borne by FHWA and the County, each in the proportion prescribed and determined by FHWA

5 The County will prepare any required preliminary engineering and planning studies, the environmental analysis and design of the Project

6 The County, at the County's expense, may request the State as its authorized agent, to perform certain work and prepare certain documents required by the FHWA, to qualify certain projects for and to receive federal funds. Such work may consist of, but is not specifically limited to, the review and approval of the County prepared environmental documents, the preparation of the analysis requirements for documentation of environmental categorical exclusion determinations; review of reports, design plans, maps, and specifications, geologic materials testing and analysis; right-of-way related activities (when specifically authorized by, for and on behalf of the County, and at no cost to the State) and such other related tasks essential to the achievement of the objectives of this agreement

7 The State will, on or after October 1, 2003, obligate federal funds for reimbursement in an amount estimated at \$11,610,000 00

8 The County will provide the State with documentation from the PAG at the time of obligation, committing to the reimbursement of federal funds, in the amount shown in the current TIP. If PAG should advance the reimbursement year of federal funds, and a formal approval through the Regional Council and a TIP/STIP amendment is approved, then the County will request the MPO send a letter to the State requesting said reimbursement of federal funds be advanced.

9 The County will invoice the State for reimbursement of federal funds after October 1, 2003.

10 The State will, upon receipt on an invoice from the County and authorization from the FHWA, reimburse the County with federal funds, for the Project addressed under this agreement, at 94.3% of the Project cost, in FFY 2004.

11 Should some unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or Project scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure for the Project.

#### **MISCELLANEOUS PROVISIONS**

1. The State assumes no financial obligation or liability under this agreement. The County assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, cost over-runs and claims. It is understood and agreed that the State's participation is confined solely to securing federal aid, that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the County and that, to the extent permitted by law, the County hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the County, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation or attorneys' fees.

2. This agreement shall become effective upon filing with the Secretary of State.

3. This agreement shall remain in force and effect until completion of the work and all related reimbursements have been made, but in no event shall this agreement be effective after December 30, 2004.

4. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. The provisions of A.R.S. § 41-1463 and Executive Order Number 99-4 issued by the Governor of the State of Arizona are incorporated by this reference as a part of this Intergovernmental Agreement.

7 This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U S C 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36

8 In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518

9 All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Mail Drop 616E  
Phoenix, AZ 85007  
FAX. 602-712-7424

Pima County  
Glen Dickens, Department of Transportation  
201 N. Stone Avenue 3<sup>rd</sup> Floor  
Tucson, AZ 85701-1207

8 Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

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IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written

**COUNTY OF PIMA**

By   
SHARON BRONSON APR 15 2003  
Chair of the Board

**STATE OF ARIZONA**  
Department of Transportation

By   
SUSAN TELLEZ  
Contract Administrator

ATTEST

By   
LORI GODOSHIAN APR 15 2003  
Clerk of the Board

RESOLUTION AND ORDER 2003 - 76

**RESOLUTION OF THE PIMA COUNTY BOARD OF SUPERVISORS APPROVING AND AUTHORIZING THE CONSTRUCTION OF WETMORE AND RUTHRAUFF ROADS FROM LA CHOLLA BOULEVARD TO FAIRVIEW AVENUE AND ACQUISITION OF FEDERAL REIMBURSEMENT FUNDS FOR THE WETMORE/ RUTHRAUFF ROAD CONSTRUCTION PROJECT.**

*(DISTRICT 3)*

**WHEREAS**, Pima County intends to construct improvements to Wetmore and Ruthrauff Roads from La Cholla Boulevard to Fairview Avenue (the "Project"), and

**WHEREAS**, Pima County has submitted to the Federal Highway Administration (FHWA) for approval of federal funds for the construction of the Project, which are estimated at \$11,610,000.00, and are identified in the Pima Association of Governments' (PAG) 2002-2006 Transportation Improvement Program , and

**WHEREAS**, Pima County wishes to advance the Project's construction using County funds and meets the FHWA requirements for advancement, and

**WHEREAS**, Arizona Department of Transportation (ADOT) is the governmental agency authorized by federal law acquire the federal funds on behalf of Pima County for the Project and ADOT has agreed to acquire and convey said funds to Pima County for reimbursement of up to 94.3% of the total Project construction costs once said funds have been acquired, and

**WHEREAS**, it is necessary for Pima County to enter into an intergovernmental agreement with ADOT to acquire the federal reimbursement funds for the Project,

**NOW, THEREFORE, BE IT RESOLVED** by the Pima County Board of Supervisors that:

1. Pima County is hereby authorized to proceed with the construct of improvements to Wetmore and Ruthrauff Roads from La Cholla Boulevard to Fairview Avenue Project and to acquire federal funds for said Project.
2. The Chair of this Board is hereby authorized and directed to sign the intergovernmental agreement with the Arizona Department of Transportation to acquire the federal reimbursement funds for the Project.
3. The various Pima County Transportation and Flood Control Department officers and employees are hereby authorized and directed to perform all acts necessary and desirable to give effect to this Resolution.

**PASSED AND ADOPTED THIS** 15th day of April, 2003.

Resolution and Order No. 2003 - 76  
Pima County Board of Supervisors

PIMA COUNTY BOARD OF SUPERVISORS:



Sharon Bronson, Chair

APR 15 2003

ATTEST:



Clerk of the Board

APR 15 2003

Approved as to form:



Deputy County Attorney

APPROVAL OF THE PIMA COUNTY ATTORNEY

I have reviewed the above referenced intergovernmental agreement, between the STATE OF ARIZONA and PIMA COUNTY, and declare this agreement to be in proper form and within the powers and authority granted to the County under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 10<sup>th</sup> day of April, 2003

Hal Eblen

County Attorney



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

TERRY GODDARD  
ATTORNEY GENERAL

CIVIL DIVISION  
TRANSPORTATION SECTION  
WRITER'S DIRECT LINE: 602.542.8855


**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR02-0482TRN (**JPA 02-48**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED May 12, 2003.

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

/ss

att.